

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

WELLS CARGO DELIVERY SERVICE, INC.¹

Employer

and

Case 30-RC-6457

**TEAMSTERS "GENERAL" LOCAL UNION NO. 200,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION³

This is my determination as to the appropriateness of the proposed bargaining unit as petitioned for by the Union. The Union is seeking to represent a bargaining unit of all drivers and dockmen employed by the Employer out of its Cudahy, Wisconsin facility. The Employer, however, contends that, in addition to drivers and dockmen, the unit must also include mechanics, and that their exclusion from the Union's proposed unit makes that unit inappropriate. I do not find the Employer's contention persuasive. I therefore conclude that, as petitioned for by the Union, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All full-time and regular part-time drivers and dockmen employed by the Employer out of its Cudahy, Wisconsin facility; excluding all mechanics, confidential employees, guards and

¹ The name of the Employer appears as amended at hearing.

² The name of the Petitioner appears as amended at hearing.

³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

supervisors as defined in the Act.⁴

DISCUSSION

The issue in this case is whether or not the Union's proposed unit of drivers and dockmen, but not mechanics, is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). The unit needs only to be an appropriate unit, and need not be the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951). For a unit to be appropriate, the key question is whether the employees share a sufficient community of interest, which is determined by examining such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. See *Ore-Ida Foods*, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995).

In this case, the Union has petitioned for a unit of drivers and dockmen. The Board has held, in similar cases, that a unit of drivers and dockmen can include or exclude mechanics, and either will be appropriate. See *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996). Additionally, as it is not disputed that the drivers and dockmen share a sufficient community of interest, the question of whether they constitute an appropriate unit could be resolved. See *Bartlett Collins Co.*, *supra*. The Employer, however, contests the appropriateness of the unit

⁴ The Employer and Petitioner filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

based on two arguments: (1) that the close community of interest the mechanics share with the drivers and dockmen makes a unit without mechanics inappropriate; and (2) that excluding the two mechanics would leave them without representation, and unable to exercise their rights under the Act.

While the mechanics do share a community of interest to some degree with the other employees, it is not so strong as to make a unit without them inappropriate. The strength of their shared interest is diminished by the ways in which the mechanics differ from the other employees. The mechanics work primarily in the shop, as opposed to the dock. They have skills and qualifications the other employees lack. The full-time mechanic has greater flexibility with his scheduling than the other employees, and is not an hourly employee like they are. Additionally, the full-time mechanic receives insurance benefits the other employees do not. Even though a unit including mechanics may be an appropriate unit despite these differences, that still does not make a unit excluding mechanics inappropriate under Board precedent. See *Overnite Transportation Co.*, *supra*.

The Employer's second argument is that, if excluded from the unit, the two mechanics will have very little opportunity to exercise their rights under the Act. While it may be true that the mechanics will have less opportunity to act concertedly than they would if they were greater in number, mechanics will still have all the rights and protections accorded under the Act, including the right to organize and seek representation as a separate unit, if they choose. I do not therefore find this concern so great as to warrant finding the Union's proposed unit inappropriate.

The Union has petitioned for a unit that includes drivers and dockmen, but excludes mechanics. Although not dispositive, a petitioner's desire as to the unit is always a relevant

consideration. *Marks Oxygen Co.*, 147 NLRB 228 (1964). While the Employer contends mechanics must also be included in the unit, the interests of the mechanics are not so great as to render the proposed unit inappropriate. The Union's proposed unit of drivers and dockmen is therefore appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters "General" Local Union No. 200 Affiliated with the International Brotherhood of Teamsters, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before July 1, 2002.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This**

request must be received by the Board in Washington by July 8, 2002.

Signed at Milwaukee, Wisconsin on June 24, 2002.

Philip E. Bloedorn, Regional Director
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Thirtieth Region
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